

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>HERSHEY CREAMERY COMPANY,</b>	:	<b>CIVIL ACTION NO. 1:18-CV-694</b>
	:	
<b>Plaintiff</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>LIBERTY MUTUAL FIRE</b>	:	
<b>INSURANCE COMPANY and</b>	:	
<b>LIBERTY INSURANCE</b>	:	
<b>CORPORATION,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

AND NOW, this 6th day of May, 2019, upon consideration of the motion (Doc. 14) for partial summary judgment filed by plaintiff Hershey Creamery Company (“Hershey”), and the motion (Doc. 17) for summary judgment filed by defendants Liberty Mutual Fire Insurance Company (“Liberty Mutual”) and Liberty Insurance Corporation (“Liberty Insurance”) (collectively, “defendants”), and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

1. Hershey’s motion (Doc. 14) for partial summary judgment is GRANTED in part and DENIED in part, as follows:
  - a. Summary judgment is GRANTED in Hershey’s favor as to its declaratory judgment claim against Liberty Mutual (Count I) regarding Liberty Mutual’s duty to defend.
  - b. On Count III, summary judgment is GRANTED in Hershey’s favor as to establishment of Liberty Mutual’s contractual obligation and breach, but DENIED, without prejudice, as to damages resulting therefrom.
2. Defendants’ motion (Doc. 17) for summary judgment is DENIED in its entirety.

3. It is ORDERED and DECLARED that Liberty Mutual has a duty to defend Hershey in the action pending in the United States District Court for the District of Delaware captioned F'real Foods, LLC v. Hamilton Beach Brands, Inc., No. 1:14-CV-1270 (D. Del. 2014), as subsequently consolidated with the related action captioned F'real Foods, LLC v. Hamilton Beach Brands, Inc., No. 1:16-CV-41 (D. Del. 2016).
4. The Clerk of Court shall enter declaratory judgment in Hershey's favor on Count I in accordance with the above paragraphs. Entry of judgment as to Count III will be DEFERRED until resolution of this claim.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania